

Senate File 351

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1 4 AN ACT
1 5 RELATING TO CHILD CARE REQUIREMENTS INVOLVING PROHIBITIONS
1 6 AGAINST INVOLVEMENT WITH CHILD CARE, RECORD CHECKS AND
1 7 EVALUATIONS PERFORMED BY THE DEPARTMENT OF HUMAN SERVICES,
1 8 ELIGIBILITY FOR STATE ASSISTANCE, AND CHILD CARE FRAUD
1 9 PROGRAM SANCTIONS, AND MAKING PENALTIES APPLICABLE.
1 10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
1 11
1 12 Section 1. Section 237A.1, Code 2003, is amended by adding
1 13 the following new subsection:
1 14 NEW SUBSECTION. 10A. "Involvement with child care" means
1 15 licensed or registered under this chapter, employed in a child
1 16 care facility, residing in a child care facility, receiving
1 17 public funding for providing child care, or providing child
1 18 care as a child care home provider, or residing in a child
1 19 care home.
1 20 Sec. 2. Section 237A.2, subsection 5, Code 2003, is
1 21 amended to read as follows:
1 22 5. If the department has denied or revoked a license
1 23 because the applicant or person has continually or repeatedly
1 24 failed to operate a licensed center in compliance with this
1 25 chapter and rules adopted pursuant to this chapter, the person
1 26 shall not own or operate a child care center for a period of
1 27 twelve months from the date the license is denied or revoked.
1 28 The department shall not act on an application for a license
1 29 submitted by the applicant or person during the twelve-month
1 30 period. The applicant or person shall be prohibited from
1 31 involvement with child care unless the involvement is
1 32 specifically permitted by the department.
1 33 Sec. 3. Section 237A.3, Code 2003, is amended to read as
1 34 follows:
1 35 237A.3 CHILD CARE HOMES.
2 1 1. A person or program providing child care to five
2 2 children or fewer at any one time is a child care home
2 3 provider and is not required to register under section 237A.3A
2 4 as a child development home. However, the person or program
2 5 may register as a child development home.
2 6 2. If a person or program has been prohibited by the
2 7 department from involvement with child care, the person or
2 8 program shall not provide child care as a child care home
2 9 provider and is subject to penalty under section 237A.19 or
2 10 injunction under section 237A.20 for doing so.
2 11 Sec. 4. Section 237A.3A, subsection 2, Code 2003, is
2 12 amended to read as follows:
2 13 2. REVOCATION OR DENIAL OF REGISTRATION. If the
2 14 department has denied or revoked a certificate of registration
2 15 because a person has continually or repeatedly failed to
2 16 operate a registered or licensed child care facility in
2 17 compliance with this chapter and rules adopted pursuant to
2 18 this chapter, the person shall not operate or establish a
2 19 registered child development home for a period of twelve
2 20 months from the date the registration or license was denied or
2 21 revoked. The department shall not act on an application for
2 22 registration submitted by the person during the twelve-month
2 23 period. The applicant or person shall be prohibited from
2 24 involvement with child care unless the involvement is
2 25 specifically permitted by the department.
2 26 Sec. 5. Section 237A.5, subsection 2, Code 2003, is
2 27 amended to read as follows:
2 28 2. a. ~~If a~~ For the purposes of this section, unless the
2 29 context otherwise requires:
2 30 (1) "Person subject to an evaluation" means a person who
2 31 has committed a transgression and who is described by any of
2 32 the following:
2 33 (a) The person is being considered for licensure or
2 34 registration or is registered or licensed under this chapter,
2 35 or,
3 1 (b) The person is being considered by a child care
3 2 facility for employment involving direct responsibility for a
3 3 child or with access to a child when the child is alone, by a
3 4 child care facility subject to licensure or registration under
3 5 this chapter, or if a or is employed with such

3 6 responsibilities.

3 7 (c) The person will reside or resides in a child care
3 8 facility, and if the person has been convicted of a crime or
3 9 has a record of founded child abuse, the department shall
3 10 perform an evaluation to determine whether the crime or
3 11 founded child abuse warrants prohibition of licensure,
3 12 registration, employment, or residence in the facility.

3 13 (d) The person has applied for or receives public funding
3 14 for providing child care.

3 15 (e) The person will reside or resides in a child care home
3 16 that is not registered under this chapter but that receives
3 17 public funding for providing child care.

3 18 (2) "Transgression" means the existence of any of the
3 19 following in a person's record:

3 20 (a) Conviction of a crime.

3 21 (b) A record of having committed founded child or
3 22 dependent adult abuse.

3 23 (c) Listing in the sex offender registry under chapter
3 24 692A.

3 25 (d) A record of having committed a public or civil
3 26 offense.

3 27 (e) The department has revoked a child care facility
3 28 registration or license due to the person's continued or
3 29 repeated failure to operate the child care facility in
3 30 compliance with this chapter and rules adopted pursuant to
3 31 this chapter.

3 32 b. The department shall conduct criminal and child abuse
3 33 record checks in this state and may conduct these checks in
3 34 other states. The In addition, the department may conduct
3 35 dependent adult abuse, sex offender registry, and other public
4 1 or civil offense record checks in this state or in other
4 2 states. If the department identifies an individual as a
4 3 person subject to an evaluation, an evaluation shall be
4 4 performed to determine whether prohibition of the person's
4 5 involvement with child care is warranted. The evaluation
4 6 shall be performed in accordance with procedures adopted for
4 7 this purpose by the department.

4 8 b. If the department determines that a person has
4 9 committed a crime or has a record of founded child abuse and
4 10 is licensed, employed by a licensee or registrant or
4 11 registered under this chapter, or resides in a licensed or
4 12 registered facility Prior to performing an evaluation, the
4 13 department shall notify the affected person, licensee, or
4 14 registrant, or child care home applying for or receiving
4 15 public funding for providing child care, that an evaluation
4 16 will be conducted to determine whether prohibition of the
4 17 person's licensure, registration, employment, or residence
4 18 involvement with child care is warranted.

4 19 c. In an evaluation, the department shall consider the
4 20 nature and seriousness of the crime or founded child abuse
4 21 transgression in relation to the position sought or held, the
4 22 time elapsed since the commission of the crime or founded
4 23 child abuse transgression, the circumstances under which the
4 24 crime or founded child abuse transgression was committed, the
4 25 degree of rehabilitation, the likelihood that the person will
4 26 commit the crime or founded child abuse transgression again,
4 27 and the number of crimes or founded child abuses
4 28 transgressions committed by the person involved. In addition
4 29 to record check information, the department may utilize
4 30 information from the department's case records in performing
4 31 the evaluation. The department may permit a person who is
4 32 evaluated to be licensed, registered, employed, or to reside,
4 33 or to continue to be licensed, registered, employed, or to
4 34 reside in a licensed facility maintain involvement with child
4 35 care, if the person complies with the department's conditions
5 1 and corrective action plan relating to the person's licensure,
5 2 registration, employment, or residence, which may include
5 3 completion of additional training involvement with child care.

5 4 The department has final authority in determining whether
5 5 prohibition of the person's licensure, registration,
5 6 employment, or residence involvement with child care is
5 7 warranted and in developing any conditional requirements and
5 8 corrective action plan under this paragraph.

5 9 d. If the department determines that the person has
5 10 committed a crime or has a record of founded child abuse which
5 11 warrants prohibition of licensure, registration, employment,
5 12 or residence, the person shall not be licensed or registered
5 13 under this chapter to operate a child care facility and shall
5 14 not be employed by a licensee or registrant or reside in a
5 15 facility licensed or registered under this chapter.

5 16 d. (1) A person subject to an evaluation shall be

5 17 prohibited from involvement with child care if the person has
5 18 a record of founded child or dependent adult abuse that was
5 19 determined to be sexual abuse, the person is listed on the sex
5 20 offender registry under chapter 692A, or the person has
5 21 committed any of the following felony-level offenses:
5 22 (a) Child endangerment or neglect or abandonment of a
5 23 dependent person.
5 24 (b) Domestic abuse.
5 25 (c) A crime against a child including but not limited to
5 26 sexual exploitation of a minor.
5 27 (d) A forcible felony.
5 28 (2) If, within five years prior to the date of application
5 29 for registration or licensure under this chapter, for
5 30 employment or residence in a child care facility or child care
5 31 home, or for receipt of public funding for providing child
5 32 care, a person subject to an evaluation has been convicted of
5 33 a controlled substance offense under chapter 124 or has been
5 34 found to have committed physical abuse, the person shall be
5 35 prohibited from involvement with child care for a period of
6 1 five years from the date of conviction or founded abuse.
6 2 After the five-year prohibition period, the person may submit
6 3 an application for registration or licensure under this
6 4 chapter, or to receive public funding for providing child care
6 5 or may request an evaluation, and the department shall perform
6 6 an evaluation and, based upon the criteria in paragraph "c",
6 7 shall determine whether prohibition of the person's
6 8 involvement with child care continues to be warranted.
6 9 e. If the department determines, through an evaluation of
6 10 a person's transgression, that the person's prohibition of
6 11 involvement with child care is warranted, the person shall be
6 12 prohibited from involvement with child care. The department
6 13 may identify a period of time after which the person may
6 14 request that another record check and evaluation be performed.
6 15 A person who continues involvement with child care in
6 16 violation of this subsection is subject to penalty under
6 17 section 237A.19 or injunction under section 237A.20.
6 18 e. f. If it has been determined that a child receiving
6 19 child care from a child care facility or a child care home
6 20 which receives public funding for providing child care is the
6 21 victim of founded child abuse committed by an employee,
6 22 license or registration holder, child care home provider, or
6 23 resident of the child care facility or child care home for
6 24 which a report is placed in the central registry pursuant to
6 25 section 232.71D, the administrator shall provide notification
6 26 at the time of the determination to the parents, guardians,
6 27 and custodians of children receiving care from the facility or
6 28 child care home. A notification made under this paragraph
6 29 shall identify the type of abuse but shall not identify the
6 30 victim or perpetrator or circumstances of the founded abuse.
6 31 Sec. 6. Section 237A.5, subsections 3 and 6, Code 2003,
6 32 are amended by striking the subsections.
6 33 Sec. 7. Section 237A.13, subsection 1, paragraph d, Code
6 34 2003, is amended to read as follows:
6 35 d. The child's parent, guardian, or custodian is absent
7 1 for a limited period of time due to hospitalization, physical
7 2 illness, or mental illness, or is present but is unable to
7 3 care for the child for a limited period as verified by a
7 4 physician.
7 5 Sec. 8. Section 237A.13, subsection 4, Code 2003, is
7 6 amended by adding the following new paragraph:
7 7 NEW PARAGRAPH. d. A child in a family that is eligible
7 8 for state child care assistance and that receives a state
7 9 adoption subsidy for the child.
7 10 Sec. 9. Section 237A.19, Code 2003, is amended by adding
7 11 the following new subsection:
7 12 NEW SUBSECTION. 3. A person who establishes, conducts,
7 13 manages, or operates a child care home in violation of section
7 14 237A.3, subsection 2, or a person or program that has been
7 15 prohibited by the department from involvement with child care
7 16 but continues that involvement commits a simple misdemeanor.
7 17 Each day of continuing violation after conviction, or notice
7 18 from the department by certified mail of the violation, is a
7 19 separate offense. A single charge alleging continuing
7 20 violation may be made in lieu of filing charges for each day
7 21 of violation.
7 22 Sec. 10. Section 237A.20, Code 2003, is amended to read as
7 23 follows:
7 24 237A.20 INJUNCTION.
7 25 A person who establishes, conducts, manages, or operates a
7 26 center without a license or a child development home without a
7 27 certificate of registration, if registration is required under

7 28 section 237A.3A, may be restrained by temporary or permanent
7 29 injunction. A person who has been convicted of a crime
7 30 against a person, ~~or a person with a record of founded child~~
7 31 ~~abuse, or a person who has been prohibited by the department~~
7 32 ~~from involvement with child care~~ may be restrained by
7 33 temporary or permanent injunction from providing unregistered,
7 34 registered, or licensed child care ~~or from other involvement~~
7 35 ~~with child care~~. The action may be instituted by the state,

8 1 the county attorney, a political subdivision of the state, or
8 2 an interested person.

8 3 Sec. 11. Section 237A.29, subsection 2, paragraph b, Code
8 4 2003, is amended to read as follows:

8 5 b. A child care provider that has been found by the
8 6 department of inspections and appeals in an administrative
8 7 proceeding or in a judicial proceeding to have obtained, or
8 8 has agreed to entry of a civil judgment or judgment by
8 9 confession that includes a conclusion of law that the child
8 10 care provider has obtained, by fraudulent means, public
8 11 funding for provision of child care in an amount equal to or
8 12 in excess of the minimum amount for a fraudulent practice in
8 13 the second degree under section 714.10, subsection 1, shall be
8 14 subject to sanction in accordance with this subsection. Such
8 15 child care provider shall be subject to a period during which
8 16 receipt of public funding for provision of child care is
8 17 conditioned upon no further violations and to one or more of
8 18 the following sanctions as determined by the department ~~and~~
~~8 19 imposed in an administrative proceeding of human services:~~

8 20 Sec. 12. Section 237A.29, subsection 3, paragraphs a and
8 21 b, Code 2003, are amended to read as follows:

8 22 a. If a child care provider is subject to sanctions under
8 23 subsection 2, within five business days of the date the
8 24 sanctions were imposed, the provider shall submit to the
8 25 department the names and addresses of children receiving child
8 26 care from the provider. The department shall send information
8 27 to the parents of the children regarding the provider's
8 28 actions leading to the imposition of the sanctions and the
8 29 nature of the sanctions imposed. ~~If the provider fails to~~
~~8 30 submit the names and addresses within five business days of~~
~~8 31 the department notifying the provider, the department shall~~
~~8 32 suspend the provider's registration or license under this~~
~~8 33 chapter until the names and addresses are provided.~~

8 34 b. ~~In addition to applying the suspension~~ If the child
8 35 care provider fails to submit the names and addresses within
9 1 the time period required by paragraph "a", the department may
9 2 shall request that the attorney general file a petition with
9 3 the district court of the county in which the provider is
9 4 located for issuance of a temporary injunction enjoining the
9 5 provider from providing child care until the names and
9 6 addresses are submitted to the department. The attorney
9 7 general may file the petition upon receiving the request from
9 8 the department. Any temporary injunction may be granted
9 9 without a bond being required from the department.

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9 13 _____
9 14 MARY E. KRAMER
9 15 President of the Senate
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9 17 _____
9 18 CHRISTOPHER C. RANTS
9 19 Speaker of the House
9 20

9 21 I hereby certify that this bill originated in the Senate and
9 22 is known as Senate File 351, Eightieth General Assembly.
9 23

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9 25 _____
9 26 MICHAEL E. MARSHALL
9 27 Secretary of the Senate

9 28 Approved _____, 2003
9 29

9 30
9 31 _____
9 32 THOMAS J. VILSACK
9 33 Governor